to unnecessary servitudes which would restrict the beneficial use and development of land in growing communities. The courts have therefore generally refused to allow easements of light and air by prescription. *Haverstick v. Sipe* (1859) 33 Pa. 368; *Stein v. Hauck* (1877) 56 Ind. 65, 26 Am. Rep. 10. Nor will they imply such an easement in connection with a sale except in cases of real and obvious necessity. *Keats v. Hugo* (1874) 115 Mass. 204, 15 Am. Rep. 80; *Rennyson's Appeal* (1880) 94 Pa. 147, 39 Am. Rep. 777. Where the question arises under a lease, opinion is divided, with perhaps a slight weight of authority in favor of allowing the easement. *Case v. Minot* (1893) 158 Mass. 577, 33 N. E. 700, 22 L. R. A. 536; *Darnell v. Columbus Show Case Co.* (1907) 129 Ga. 62, 58 S. E. 631, 13 L. R. A. (N. S.) 333; *contra, Keating v. Springer* (1893) 146 Ill. 481, 34 N. E. 805, 22 L. R. A. 544. In such cases the argument from a general policy of free development has less weight because of the temporary character of the right if allowed; but it is perhaps a close question whether, in a country where easements of light and air are so much the exception rather than the rule, an intention to grant such an easement should readily be inferred.

HUSBAND AND WIFE—LIABILITY OF HUSBAND FOR WIFE'S TORTS—EFFECT OF MARRIED WOMEN'S PROPERTY ACTS.—The plaintiff sued the defendants, husband and wife, on account of personal injuries caused by the defective condition of a garage owned by the wife. The plaintiff was employed by the wife as a chauffeur. A married women's property act was in force. *Held,* that the defendant husband was not liable. *Cole v. De Trafford* (1917, K. B.) 117 L. T. Rep. N. S. 224.

In an action for alienating the affections of the plaintiff's husband, the plaintiff contended that the defendant was liable for his wife's tort although he had had no active participation in it. A married women's property act was in force. *Held,* that the husband was not liable. *Claxton v. Pool* (1917, Mo.) 197 S. W. 349.

By the common law the husband was jointly liable with his wife for torts committed by her, subject to the exception that where the tort was not a tort *simpliciter,* but the substantial basis of the wrong done the plaintiff was an alleged contract made by the wife (invalid, of course, as a contract) no liability could be imposed upon the husband. *Liverpool, etc., Ass'n v. Fairhurst* (1854) 9 Ex. 420; *Wolff & Co. v. Lozier* (1902, Sup. Ct.) 68 N. J. L. 103, 52 Atl. 303. It is submitted that the true reason for the husband's liability was the necessity of joining him "for conformity" because the wife could not be sued alone. *Capel v. Powell* (1864) 17 C. B. N. S. 743; *Cuneod v. Leslie* (C. A.) [1909] 1 K. B. 880, 887; *cf. Henley v. Wilson* (1902) 137 Cal. 273, 70 Pac. 21. Consequently it would seem that legislation permitting a married woman to sue and be sued as a feme sole and to own separate property might well be held to abolish the husband's common law liability See *Schuler v. Henry* (1908) 42 Colo. 367, 94 Pac. 360. In England, however, it has been decided that his liability remains unaltered by the Married Women's Property Act. *Earle v. Kingscote* (C. A.) [1900] 2 Ch. 585; but *cf.* remarks of Fletcher Moulton, L. J., in *Cuneod v. Leslie, supra,* p. 888. And the principal English case above reported is decided, not upon the effect of the emancipating legislation (except so far as that made possible the wife's separate ownership of the garage), but upon the theory that the plaintiff's cause of action arose out of his contract of employment, the invitation to enter the garage arising therefrom and being essential to his cause of action. Hence the case was thought to fall within the exception to the husband's common law liability. In America there is much diversity of opinion as to how far emancipating legislation has abrogated the old rule. See *Schuler v. Henry, supra.* By the weight of authority the husband is not liable for torts

arising out of the condition or management of the wife's separate property. *Boutell v. Shellaberger* (1915) 264 Mo. 70, 174 S. W. 384; *Quilty v. Battie* (1892) 135 N. Y. 201, 32 N. E. 47; *cf. Missio v. Williams* (1914) 129 Tenn. 504, 167 S. W. 473. But as to pure torts not connected with the wife's separate property, the husband is usually still held liable. *Poling v. Pickens* (1911) 70 W. Va. 117, 73 S. E. 251, Ann. Cas. 1913 D, 995. The principal Missouri case above reported repudiates this distinction and ranges Missouri with the few states which have held the common law rule entirely abolished by emancipating legislation. It overrules earlier Missouri cases cited in the opinion. The rule laid down by the decision is, for the future, expressly established by a recent statute. Mo. Laws 1915, 269.

NEGLIGENCE—IMPUTED NEGLIGENCE—JOINT ENTERPRISE.—The plaintiff, a travelling salesman, desired to cover certain territory. Another salesman of his acquaintance intended to travel over the same territory in his own automobile, driving the car himself. It was arranged that the plaintiff should travel with him, sharing the expense. Through the negligence of the owner in driving, the automobile was struck by the defendant's train. The plaintiff was injured, and sought to recover. *Held,* that the plaintiff was barred by the driver's negligence, since they were engaged in a joint enterprise. *Derrick v. Salt Lake Ry. Co.* (1917, Utah) 168 Pac. 335.

The doctrine of imputed negligence, as formerly applied to driver and passenger, is now generally rejected, the principle being limited to cases involving some element of agency, including those of master and servant, and of joint enterprise. *Denver C. T. Co. v. Armstrong* (1912) 21 Colo. App. 640, 123 Pac. 136; *Ward v. Meeds* (1911) 114 Minn. 18, 130 N. W. 2. See also L. R. A. 1917 A, 543 and note. Whether or not an undertaking is a joint enterprise is a question of fact, and the courts are not in accord upon the definition. *Ward v. Meeds, supra; Judge v. Wallen* (1915) 98 Neb. 154, 152 N. W. 318, L. R. A. 1915 E, 436. Generally, it is considered as one in which each participant has authority to act for the other in respect to the control of the means used to execute the common purpose, and an equal right to direct the conduct of the undertaking. *St. Louis, etc., Ry. Co. v. Bell* (1916, Okla.) 159 Pac. 336; *Koplitz v. St. Paul* (1902) 86 Minn. 373, 90 N. W. 794. Thus, where two men hired a horse and buggy and jointly bore the expense, it was considered a common enterprise. *Christopherson v. Minneapolis Ry. Co.* (1914) 28 N. D. 128, 147 N. W. 791. Also, where two men were engaged in moving furniture. *Schron v. Staten I. R. R. Co.* (1897, N. Y.) 16 App. Div. 111, 45 N. Y. Supp. 124; *Cass v. Third Ave. Ry. Co.* (1897, N. Y.) 20 App. Div. 591, 47 N. Y. Supp. 356. But it has been held that a common purpose of riding for pleasure does not alone establish a joint enterprise. *Lawrence v. Sioux City* (1915) 172 Iowa 320, 154 N. W. 494; *Chicago, P. & St. L. R. v. Condon* (1905) 121 Ill. App. 440. Though the principal case is supported by *Judge v. Wallen, supra,* it would appear from ordinary experience that where one of the participants is the owner of the car, there is a tacit understanding that the vehicle is under his sole control, thus removing the essential requisite of a joint enterprise. Such a situation is manifestly different from one in which the parties jointly hire another's vehicle. An agreement to share expense would furnish some evidence on the question of joint control, but would seem not to be decisive. For this reason, the decision in the principal case seems open to question.

PRACTICE—JURY—CHALLENGE TO ARRAY AFTER CHALLENGE TO POLLS.—The defendant in a civil action assisted in the selection of the panel of jurymen for the term. The plaintiff, with knowledge of this fact, examined the talesmen